

## **CITY OF HAYWARD**

### **AGENDA REPORT**

AGENDA DATE 07/22/03

AGENDA ITEM 6

WORK SESSION ITEM \_\_\_\_\_

**TO:** Mayor and City Council

**FROM:** Library Director

**SUBJECT:** USA PATRIOT Act and Libraries

#### **RECOMMENDATION:**

It is recommended that the City Council adopt the attached resolution regarding the USA PATRIOT Act and authorize a letter in support of HR 1157.

#### **BACKGROUND:**

The USA PATRIOT Act has raised concerns across the country about the loss of privacy, intellectual freedom, and civil rights in the United States. Of particular concern to libraries are the Act's provisions allowing government law enforcement agencies to have access to "business records," including library records about individual borrowers.

These provisions may compromise the confidentiality of library users' records that the Hayward Public Library has always followed pursuant to California State law. We have trained Library staff to refer all requests for information from law enforcement to Library Administration and our policy is to consult with the Office of the City Attorney whenever such a request is received. Due to the USA PATRIOT Act, these procedures may be more important than ever.

Hayward Library staff continue to monitor and assess these issues as part of supporting our stated mission to promote and celebrate the cultural heritage of the community, providing materials and services that support each individual's right to know and that encourage the development of a life long interest in reading and literature, to serve as an advocate and resource for new readers of all ages and to provide popular materials and a reference center, actively promoting use of the diverse collection through the assistance of trained and helpful staff.

The Library Commission has studied and discussed the USA PATRIOT Act and its implications for Hayward libraries and library users for the last several months. As a part of this process, the Commission sought advice on the scope of the Act from Assistant City Attorney, Maureen Conneely, reviewed an abbreviated version of the Act and legal analysis of

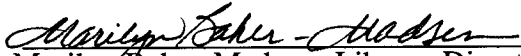
the Act prepared by the Congressional Research Service, studied changes made by the Act and the impact of the Act on user privacy. The Commission has also reviewed resolutions adopted by other organizations including the American Library Association, the California Library Association, various California cities, the Bill of Rights Defense Committee and the American Civil Liberties Union. The Commission also reviewed the Freedom To Read Protection Act, HR 1157 introduced in the House of Representatives on March 6, 2003 by Congressman Bernie Sanders (attached). This proposed bill would exempt libraries and bookstores from the expanded FBI surveillance permitted by the Act in Section 215 and protect the privacy and confidentiality of library records while still providing law enforcement agencies access to these records. As a part of this study and review, the Commission received public comment on this matter.

Commissioners recognized that the Hayward Public Library supports the right of the public to access information and the freedom to read. The Library Bill of Rights and the Freedom to Read Statement developed by the American Library Association has protected free access to information for the community and their freedom to read at the Hayward Public Library since 1982 when the Library Commission and the Hayward City Council adopted these documents. During their deliberations, members of the Library Commission expressed concern about the consequences of the USA PATRIOT Act as it affects the privacy of library users. Although members believe that federal, state and local governments should protect the public from terrorist attacks, such as those that occurred on September 11, 2001, they feel that government bodies should do so in a rational and deliberative fashion to ensure that any new security measure enhances public safety without impairing constitutional rights or infringing on civil liberties. The Library commission proudly values the diverse population of Hayward, including citizens of other nations whose contributions to the community are vital and expressed concern about the profiling of any particular racial, ethnic, cultural, political or religious group in investigations.

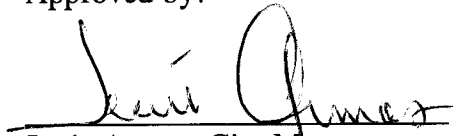
Members of the Library Commission expressed their support of user privacy and freedom of information at the Hayward Public Library and sought to encourage the City Council to join 2 other states and 134 cities, towns and counties that have already passed resolutions to protect the civil liberties of their residents. Members of the Commission also encouraged library staff to educate the Hayward community, stakeholders, staff and patrons with balanced information about the USA PATRIOT Act and other recently enacted laws regulations and guidelines. In response, staff has developed a brochure, Privacy at the Hayward Public Library, which will be made available to library users at both library facilities.

It is recommended that the City Council reaffirm its support of user privacy and freedom of information at the Hayward Public Library by adopting the attached resolution and by authorizing the Mayor to submit a letter in support of HR 1157.

Prepared and Recommended by:

  
Marilyn Baker-Madsen, Library Director

Approved by:

  
Jesús Armas, City Manager

Attachments: Freedom to Read Protection Act of 2003 (HR 1157)  
Draft Minutes of the June 16, 2003 Library Commission Meeting

**Freedom to Read Protection Act of 2003 (Introduced in House)**

HR 1157 IH

108th CONGRESS  
1st Session  
**H. R. 1157**

To amend the Foreign Intelligence Surveillance Act to exempt bookstores and libraries from orders requiring the production of any tangible things for certain foreign intelligence investigations, and for other purposes.

**IN THE HOUSE OF REPRESENTATIVES**

March 6, 2003

Mr. SANDERS (for himself, Mr. PAUL, Mr. DEFAZIO, Mr. BLUMENAUER, Mr. OWENS, Ms. LEE, Mr. FARR, Mr. TOWNS, Mr. GRIJALVA, Mr. CONYERS, Mr. MCDERMOTT, Ms. JACKSON-LEE of Texas, Mr. HINCHEY, Mr. OLVER, Ms. WOOLSEY, Mr. FRANK of Massachusetts, Mr. JACKSON of Illinois, Mr. MCGOVERN, Ms. BALDWIN, Ms. WATERS, Mr. FORD, Mr. LIPINSKI, Mr. STARK, and Mr. UDALL of Colorado) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Select Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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**A BILL**

To amend the Foreign Intelligence Surveillance Act to exempt bookstores and libraries from orders requiring the production of any tangible things for certain foreign intelligence investigations, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the `Freedom to Read Protection Act of 2003'.

## SEC. 2. EXEMPTION OF BOOKSTORES AND LIBRARIES FROM ORDERS REQUIRING THE PRODUCTION OF ANY TANGIBLE THINGS FOR CERTAIN FOREIGN INTELLIGENCE INVESTIGATIONS.

Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended by adding at the end the following new subsection:

`(f)(1) No application may be made under this section with either the purpose or effect of searching for, or seizing from, a bookseller or library documentary materials that contain personally identifiable information concerning a patron of a bookseller or library.

`(2) Nothing in this subsection shall be construed as precluding a physical search for documentary materials referred to in paragraph (1) under other provisions of law, including under section 303.

`(3) In this subsection:

`(A) The term `bookseller' means any person or entity engaged in the sale, rental or delivery of books, journals, magazines or other similar forms of communication in print or digitally.

`(B) The term `library' has the meaning given that term under section 213(2) of the Library Services and Technology Act (20 U.S.C. 9122(2)) whose services include access to the Internet, books, journals, magazines, newspapers, or other similar forms of communication in print or digitally to patrons for their use, review, examination or circulation.

`(C) The term `patron' means any purchaser, renter, borrower, user or subscriber of goods or services from a library or bookseller.

`(D) The term `documentary materials' means any document, tape or other communication created by a bookseller or library in connection with print or digital dissemination of a book, journal, magazine, newspaper, or other similar form of communication, including access to the Internet.

`(E) The term `personally identifiable information' includes information that identifies a person as having used, requested or obtained specific reading materials or services from a bookseller or library.'

## SEC. 3. EXPANSION OF REPORTING REQUIREMENTS UNDER FISA.

Section 502 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1862) is amended by striking subsections (a) and (b) and inserting the following:

`(a) On a semiannual basis, the Attorney General shall fully inform the appropriate congressional committees concerning all requests for the production of tangible things under section 501, including with respect to the preceding 6-month period--

`(1) the total number of applications made for orders approving requests for the production of tangible things under section 501; and

`(2) the total number of such orders either granted, modified, or denied.

`(b) In informing the appropriate congressional committees under subsection (a), the Attorney General shall include the following:

`(1) A description with respect to each application for an order requiring the production of any tangible things for the specific purpose for such production.

`(2) An analysis of the effectiveness of each application that was granted or modified in protecting citizens of the United States against terrorism.

`(c) In a manner consistent with the protection of the national security of the United States, the Attorney General shall make public the information provided to the appropriate congressional committees under subsection (a).

`(d) In this section, the term `appropriate congressional committees' means--

`(1) the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate; and

`(2) the Committees on the Judiciary of the House of Representatives and the Senate.'.

# DRAFT

CITY OF HAYWARD  
Minutes of the Library Commission Meeting  
June 16, 2003

Administrative Office  
Hayward Public Library  
835 C Street, Hayward

1. **Call to Order and Pledge of Allegiance**

The meeting of the Hayward Library Commission was called to order by Commission Chair Bill Quirk at 7:00 PM, and followed by recitation of the Pledge of Allegiance.

2. Attendance	Present This Meeting	Present To Date	Absent to Date This F/Y
Nathaniel Bruno	X	9	1
William Burnside	X	9	1
Jessica Fields	X	8	2
Elsa Glines	X	9	1
Bill Quirk	X	10	0

Staff: Marilyn Baker-Madsen, Library Director  
Linda Atwater, Administrative Secretary

Liaison: Hayward City Council Member Doris Rodriquez

Guest: Charles Cameron  
Harry Scott  
Mary Anne Reno

3. **Minutes of Meeting of May 19, 2003**

**Board Action:** It was moved and seconded (Glines/Burnside) to approve the minutes of the meeting of May 19, 2003 as submitted. Motion carried 4/0/1 (as Commissioner Fields was not in attendance of the May 19, 2003 meeting, she abstained from voting).

4. **Public Comment:** The members of the public were welcomed and introductions were made.

5. **Friends of the Hayward Public Library Report.** Chair Quirk provided the Friends of the Library Report. An audit of the Friends books was recently completed and a report was provided to the Board at their meeting. He reported that he is conducting an informal survey of library users and non-users and has spoken with a few hundred people, using a list of voters who voted in the last election. He asks if the individual uses the Library. If the response is affirmative, he then asks for comments, both good and bad. If the individual does not use the library, he asks if there is something they would like to see that the library does not have. The most common remark he has heard is that library service is great and the staff is dedicated and helpful. Survey results indicate that library use tends to drop off with age, in part because kids grow up and parents don't take them to the library as much, and many people have trouble getting around as they get older. Parking is a problem for some library users. There is some confusion with regard to hours (for those who don't use the library on a regular basis), especially when hours are cut one year, then restored the next. When these findings were shared with the Friends Board, a

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discussion ensued on the Friends possibly helping the library staff with publicizing some of the library services that people may not be aware are available.

6. **BALIS/System Advisory Board (SAB) Report**

The Library Director provided the Bay Area Library and Information System (BALIS)/System Advisory Board (SAB) Report. The SAB met on May 21<sup>st</sup> at the Hayward Public Library. The Governor's Budget was discussed, with focus on the restoration of the Transaction Based Reimbursement (TBR) program, and what happened to the Public Library Fund (PLF), with the shifting of some of that fund to TBR. The group passed the Plan of Service for the coming year and nominated a new Chair and Vice Chair, Eddie Jo Mack (Alameda County Library) and Marc Lambert (Alameda City Library) respectively. Each library shared news from their jurisdiction. Alameda City is in the process of building a new library, and is applying for the library bond building funds. A series of public meetings has been held to get input on the design of the building. The new Dublin Library is open. Dublin is managed by the Alameda County Library system, however, the City of Dublin paid for the library building and provides a great deal of funding for the library. Contra Costa County is hosting presentations on the USA PATRIOT Act. Ilene Rockman reported on Hayward Public Library's new Literacy Program Coordinator. Livermore is constructing a new building, with an anticipated move in date of March/April 2004. San Francisco hosted Congressman Bernie Sanders, who talked about the USA PATRIOT Act and the Freedom to Read Protection Act that he is sponsoring. The SAB set their meeting schedule and agenda topics for the next year.

7. **Old Business**

**USA PATRIOT Act.** The Library Commission discussed the draft resolution in support of patron privacy and freedom of information in libraries that was included in their agenda packets. Chair Quirk invited comment on the draft document. Commissioner Glines commented on paragraph six of the document, which reads:

"WHEREAS, the Library Commission supports HR 1157, the Freedom to Read Protection Act, because it would protect the privacy and confidentiality of library records, while still providing law enforcement agencies access to these records with a court ordered search warrant based on some type of reasonable cause;"

Commissioner Glines suggested the paragraph be changed to read:

"WHEREAS, the Library Commission supports HR 1157, the Freedom to Read Protection Act, because it would protect the privacy and confidentiality of library records, while still providing law enforcement agencies access to these records with a court ordered *subpoena* or search warrant based on *probable cause*;"

Commissioners referenced materials related to the Sanders Act, the USA PATRIOT Act, and the resolutions of other jurisdictions, to consider the various legal language used with regard to search warrants and subpoenas, probable cause and reasonable cause.

Chair Quirk suggested the paragraph be changed by deleting the last thirteen words of the text to read:

"WHEREAS, the Library Commission supports HR 1157, the Freedom to Read Protection Act, because it would protect the privacy and confidentiality of library records, while still providing law enforcement agencies access to these records;"

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The Commission considered this change in wording. Commissioner Bruno commented that as a matter of criminal procedure there are two different standards for reasonable suspicion and probable cause. He suggested that perhaps another City, in drafting its resolution, combined the two, not really understanding the difference. He noted that it would be appropriate to use the language "probable cause".

**Board Action:** It was moved and seconded (Glines/Fields) that the resolution be approved with the change of deleting the words "with a court ordered search warrant based on some type of reasonable cause".

Commissioner Bruno commented that he was pleased and gratified at what the Library Commission had decided the resolution was not. To him, the language included in the resolution does not suggest that it is a directive that prohibits compliance with the USA PATRIOT Act in its current form. It is not a resolution that encourages City officials to refuse to comply with the USA PATRIOT Act as it is right now. He referred to the City of Arcata, that passed a local ordinance that punishes city officials with fines for voluntarily complying with legitimate law enforcement requests for information under the PATRIOT Act. Commissioner Bruno was pleased that the resolution did not outright declare that the USA PATRIOT Act was unconstitutional in its current form. He felt the Library Commission had chosen a prudent course and that the resolution was more of a statement of political advocacy based on policy preferences for what the Commission would like to see as the manner of protecting civil rights and privacy in this country. Commissioner Bruno felt it was a statement of perhaps how a majority of the Commission would like to advocate the Congress to pass laws to protect privacy.

Commissioner Glines expressed her hope that the Library Commission would pass the resolution. She referred to the most recent CALTAC newsletter with its President's message that the CALTAC board unanimously voted to endorse HR 1157, the Freedom to Read Protection Act. Commissioner Glines noted that many libraries in the area, in the State and throughout the country, have passed similar motions to show the importance of libraries, freedom of ideas, freedom to express those ideas, and that libraries are the place where everyone can get information.

Commissioner Burnside shared his thought that the Library Commission should focus their time on how to deal with the serious budget deficit. He expressed his concern for the proper funding of the library and keeping its doors open. With regard to the USA PATRIOT Act, Commissioner Burnside didn't believe there was a need for action to be taken. In the past 18 years, only four requests for information have been made of the Hayward Public Library. He believed that the passage of the Sanders Act should answer the questions regarding the library and bookstores that have been raised.

Chair Quirk expressed agreement with the comment made by Commissioner Bruno, that the resolution was a reasonable one. He stated that Commissioner Bruno helped the Commission to arrive at this point, and appreciated his input. Chair Quirk didn't think the big problem was so much the USA PATRIOT Act, but rather the way in which many laws are selectively being enforced.

In response to a question raised concerning the passage of motion, the Library Director responded that the Library Commission is made up of seven members; a quorum is 4 members and a majority is 4 members.

Chair Quirk called for the vote. There were three votes in favor of the motion (Fields, Glines, Quirk) and two votes against the motion (Bruno, Burnside). Motion failed to carry.

The Library Director advised the Commission that staff is working to draft a question-and-answer handout that will be made available to the public on customer privacy of the Hayward Public Library. The draft will be provided to the Library Commission for their review and comment. The Library Director will move forward in preparing an Agenda Report for the City Council, to advise them that the Library Commission had taken the matter under consideration and that there were concerns expressed about the impact of the USA PATRIOT Act as it pertains to the privacy and intellectual freedom of Hayward Public Library customers. She will provide a discussion of the studies undertaken by the Commission and the concerns and observations expressed by members of the Commission to inform and educate the City Council on the matter.

Harry Scott asked if this were a matter that could be reconsidered by the Library Commission at a future time, since the body is currently down two members. Chair Quirk responded that when there is a full Commission in the fall, the matter could be brought back.

Council Member Rodriguez asked for Library Commission protocol with regard to offering comment during the meeting. Chair Quirk invited Council Member Rodriguez to provide comment during any part of the meeting. Council Member Rodriguez advised the Commission that the City Council would be holding interviews on July 1<sup>st</sup> for prospective Board and Commission members. There were a number of applications received from members of the community who were interested in serving on the Library Commission. Council Member Rodriguez expressed that she was disappointed with the vote of the Commission with regard to the USA PATRIOT Act resolution, however, she commented on this being a democracy and that there were differing opinions. She appreciated that the matter would be forwarded to the City Council with the various observations and comments that were expressed by members of the Commission.

#### 8. New Business

**City Website Service Categories.** Included in the agenda packet was a copy of the draft City Website Service Categories. Council Member Rodriguez advised the Commission that she serves on the City Council's CTAC committee along with Council Members Hilson and Henson. The City is in the process of designing a new website and an important focus of the website is to provide information about City services. This would include services that the City provides and also information about other public services available in Hayward. Commissioners reviewed the materials provided to them and offered comment. Council Member Rodriguez encouraged Commissioners to view the website.

The Library Director noted that the Library Department's web page is currently mounted on the Library's automation server (III). It is difficult to make changes to the web page, and does not loan itself to interfacing by staff. As the City makes its migration to the new home page, the Library Department will be included. The City Manager has expressed his interest in hearing from each Board and Commission member as to the content of the service categories that have been identified to date. He encourages them to offer any input.

Commissioner Glines noted that there were several categories under which the Library Department should be mentioned, including Children and Youth, Employment

# DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

*mm*  
*1/14/03*

RESOLUTION IN SUPPORT OF PATRON PRIVACY AND  
FREEDOM OF INFORMATION IN LIBRARIES  
AUTHORIZING THE MAYOR TO SUBMIT A LETTER IN  
SUPPORT OF THE FREEDOM TO READ INFORMATION  
ACT OF 2003 (HR 1157)

WHEREAS, the City Council of the City of Hayward is concerned about the consequence of the USA PATRIOT Act as it affects the privacy of library patrons; and

WHEREAS, federal, state and local governments should protect the public from terrorist attacks, such as those that occurred on September 11, 2001, but should do so in a rational and deliberative fashion to ensure that any new security measure enhances public safety without impairing constitutional rights or infringing on civil liberties; and

WHEREAS, the City Council proudly values the diverse population of Hayward, including citizens of other nations whose contributions to the community are vital, and is concerned about the profiling of any particular racial, ethnic, cultural, political or religious group in investigations; and

WHEREAS, libraries, and specifically the Hayward Public Library, are a critical force for promoting the free flow of information, facilitating its distribution and protecting the privacy of those who seek information; and

WHEREAS, the Library Commission of the City of Hayward encourages library staff to educate our community, stakeholders, staff and patrons with balanced information about the USA PATRIOT Act and other recently enacted laws, regulations, and guidelines; and

WHEREAS, the City Council supports HR 1157, the Freedom to Read Protection Act, because it would protect the privacy and confidentiality of library records, while still providing law enforcement agencies access to these records.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward supports the right of the public to access information and the freedom to read and reaffirms City support of user privacy and freedom of information at the Hayward Public Library.

BE IT FURTHER RESOLVED that the City Council of the City of Hayward takes an official position in support of the Freedom to Read Protection Act (HR 1157) and authorizes the Mayor to submit a letter in support of this bill.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2003

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward